THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.21310 of 2007

DATED: 22-10-2007.

Between:

P. Daniel Hanan

.. PETITIONER

And

The Regional Passport Officer,
Office at H.No.8-2-215 to 219,
Near Prashanth Theatre,
Kurmaguda, Secunderabad.

.. RESPONDENT

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.21310 of 2007

ORDER:

The writ petition is filed for a writ of Mandamus declaring the action of the respondent in not receiving the application of the petitioner for making the correction of the place of birth in the passport as illegal and arbitrary; and consequently to direct the respondent to receive the application of the petitioner for correction of the place of birth in the passport as Secunderabad instead of Jaggayyapet.

2. This Court ordered notice before admission on 08.10.2007.

3. In the affidavit filed in support of the writ petition, which is sworn by the father of the writ petitioner, it is stated that the writ petitioner was born on 30.04.1991 at Devi Hospital, Thirumalagiri, Secunderabad, and as per the records forwarded by the said hospital to the Secunderabad Cantonment Board, the Cantonment Board registered his date of birth and issued Date of Birth Certificate on 17.08.1991. It is also stated that subsequently the writ petitioner had applied for passport and along with the application, he had also enclosed the Date of Birth Certificate issued by the Secunderabad Cantonment Board. But, in the passport, by mistake, his place of birth was mentioned as Jaggayyapet. Further, it is stated that after obtaining passport, the writ petitioner did not visit any foreign country and, therefore, did not verify the passport carefully at any point of time. It is further stated that recently when the passport was verified for knowing the date of its expiry, it was found that the place of birth of the petitioner was mentioned as Jaggayyapet instead of Secunderabad. It is also

further stated that the passport was issued to the writ petitioner in the year 2002 by the Regional Passport Office at Hyderabad, with passport No.E-2683659, which is valid up to 17.07.2007. It is also stated that, while applying for renewal of the passport, the deponent submitted the writ petitioner's Date of Birth Certificate. It is also further stated that the deponent applied for immigration along with his wife and children to U.S.A. and the U.S. Immigration Authority sent the application forms for payment of immigration processing fee. The fee was accordingly paid and subsequently the family members of the deponent signed and sent the immigration forms to U.S. Department of Immigration. It is also further stated that basing on this, the deponent approached the Regional Passport Officer, the respondent herein, for correction of place of birth as Secunderabad instead of Jaggayyapet in the passport of the writ petitioner, but the respondent's protocol officer directed the deponent to approach the Civil Court for declaratory order and stated that otherwise the place of birth would not be corrected. It is also stated that the writ petitioner approached the respondent for several times, but there was no positive response. It is also further stated that the Date of Birth Certificate issued by the Secunderabad Cantonment Board clearly discloses that the writ petitioner's place of birth is Secunderabad. If the place of birth is not rectified at the time of renewal of passport, it would be contrary to the Date of Birth Certificate issued by the Cantonment Board and it would create complications for processing further studies in foreign countries and also for immigration. It is also further stated that the writ petitioner is still minor and no prejudice would be cause to anybody in correcting the place of birth as Secunderabad instead of Jaggayyapet. It is also further stated that since the application of the writ petitioner for renewal of passport needs to be processed immediately along with the visa of his father i.e. the deponent as otherwise his future studies would be affected, the petitioner is constrained to approach this Court by way of this writ

petition seeking appropriate direction to the respondent for correction of place of birth in his passport. It is also further stated that the action of the respondent in not considering the request of the petitioner is arbitrary and illegal. It is further stated that the Government of India, Ministry of External Affairs, had issued a Circular, dated 18.04.2001, pursuant to the Judgment of the High Court of Bombay in Civil Writ Petition No.1072 of 2000, and the instructions/clarifications issued in the said Circular are that where an applicant is seeking rectification/correction of a mistake in the entry on the date of birth/place of birth in the passport, PIA may, after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases. It is also stated that even though the said Circular is saying that there is no need for declaratory order, the respondent is insisting for the same, which is arbitrary, illegal and in violation of fundamental rights under Articles 14 and 21 of the Constitution of India. Under such circumstances, the present writ petition is filed.

4. The learned counsel for the petitioner placed strong reliance on the Circular, dated 18.04.2001, which reads as hereunder:

Ministry of External Affairs
(PV-I Section)

Circular

Vi/401/2/5/2001 18th April, 2001

As per the current practice, in case of change of date of birth/place of birth, the applicant is requested to produce the original declaratory order from a First Class Judicial Magistrate. However in view of the recent judgment given by the High Court of Judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued:

(a) Where an applicant is seeking rectification/correction of a

mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, PIA may effect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act, 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e. school/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e. municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of jurisdiction, certifying the valid date of birth/place of birth.

Sd/-
(Manju)
Under Secretary (PV-I)

All Passport Issuing Authorities

Copy for information to L & T Division, MEA.

5. This Court in **Mohd. Nasrullah Khan** V. **Regional Passport Officer**, **Hyderabad**[1], at paragraphs 4 to 7, observed as hereunder:

"In *Ali Imran V. Regional Passport Officer, Secunderabad* (2003 (4) ALT 474 = 2003 (3) ALD 625, I have considered the Circular dated 18.4.2001 issued by the Government of India in the Ministry of External Affairs pursuant to the judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the

said Circular read as under:

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA (passport issuing authority) may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, PIA may effect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the General Clauses Act, 1997, a competent authority issuing a certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., school/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction.

Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt. 18.4.2001.

Following the Judgment of this Court in *Ali Imran* (referred above), this writ petition is also disposed of directing the respondent to consider the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2 PRIVATE, issued by the Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no order as to costs."

6. This Court again in **Durgempudi Venkata Raghava v. Passport Officer**, **Ministry of External Affairs**, **Passport Office**, **Hyderabad**[2], at paragraphs 9 to 14, observed as hereunder:

"Placing reliance on the clarification issued on the aforesaid Circular, Writ Petition No.8533 of 2004 was disposed of directing the respondents to consider the representation of the petitioner along with the Secondary School Certificate issued by Secretary, Board of Secondary Education, Andhra Pradesh and pass appropriate orders in the light of the observations made in the said judgment.

It is no doubt true that the present Writ Petition was filed in the year 1997 and the Government under Ministry of External Affairs issued the Circular referred to supra on 18.4.2001. As can be seen from the material available on record, the

certificates, which had been produced before this Court, it is clear that it is only a bona *fide* mistake, which had crept in.

Apart from this aspect of the matter, no counter-affidavit had been filed denying the specific averment made in the affidavit filed in support of Writ Petition that along with the application form for passport, the Travel Agent also enclosed copies of S.S.C. certificate, Intermediate certificate and also Degree certificate. Therefore, it is evident that without verifying the date of birth, the respondent authority just took the date of birth as filled up in the application form and issued the passport. Hence, it is needless to say that it is only a bona fide mistake.

The learned Senior Standing Counsel for Central Government, no doubt submitted that in such a situation, if the passport was issued prior to the said circular it would be proper to give an opportunity to the Writ Petitioner to file fresh application for issuance of passport to the competent authority.

In the light of the facts and circumstances, especially in view of Clause (a) of the Circular, dated 18.4.2001 referred to supra and also in view of the fact that all these copies of documents also had been produced at the time of filing of the application form but a *bona fide* mistake had crept in, the Writ Petition is disposed of with the following directions.

The petitioner shall file fresh application enclosing all the copies of certificates, which are being relied upon by him, before the respondent within a period of one month from today and the respondent is directed to take into consideration of the certificates and after verifying the same, pass appropriate orders in this regard within a period of one month thereafter…"

7. In the light of the Circular referred to supra and also the decisions specified above, this Court is of the considered opinion that the writ petition be disposed of directing the respondent to receive the

application of the petitioner for making correction of place of birth in the passport of the petitioner in the light of the Circular and also the decisions of this Court referred to supra and dispose of the same in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petition is accordingly disposed of. No order as to costs.

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(**P.S.NARAYANA,J)**

22nd October, 2007.

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[1] 2005 (1) ALT 95

[2] 2005 (1) ALT 751